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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 15, 2001

COMMONWEALTH OF VIRGINIA ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC010100

Ex Parte: In the matter of  
establishing rules governing  
an Alternative Dispute Resolution  
Process for telecommunications  
carriers

ORDER FOR NOTICE AND COMMENT OR REQUESTS FOR HEARING

The State Corporation Commission ("Commission") is firmly committed to taking all necessary and appropriate steps to ensure the efficiency and success of a competitive telecommunications marketplace in Virginia. In addition to interconnecting with each other, carriers are also competing with each other. Therefore, it is likely disputes will arise that require expedited resolution by the Commission to prevent an adverse impact on telecommunications carriers' ability to serve their customers and to provide customers with uninterrupted service. Recognizing there is a need for an additional procedure to accommodate the expeditious resolution of disputes between competing telecommunications carriers, competitive, incumbent or otherwise, we believe the implementation of an Alternative Dispute Resolution Process

("ADRP") is essential to help support effective competition in Virginia. The ADRP may be beneficial to both carriers and the public in that it will address the need for telecommunications carriers to be heard promptly with regard to certain issues that may affect the development of telephone competition.

Accordingly, as part of our collaborative effort in Case No. PUC000026, the attached proposed rules for an ADRP ("Proposed Rules") were developed with input from the Dispute Resolution Subcommittee<sup>1</sup> established as part of that case. Interested parties are invited to comment upon and suggest modifications or supplements to, or request a hearing on, the Proposed Rules. The Commission's Division of Information Resources is directed to forward the Proposed Rules to the Registrar of Virginia for publication in the Virginia Register of Regulations and to make the Proposed Rules available on the Commission's website.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC010100.

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<sup>1</sup> The Dispute Resolution Subcommittee was established as a Subcommittee of the Collaborative Committee, and consisted of representatives from numerous telephone companies, including both incumbent and competitive local exchange carriers, and members of our Staff.

(2) The Commission's Division of Information Resources shall forward the Proposed Rules to the Registrar of Virginia for publication in the Virginia Register of Regulations.

(3) On or before May 15, 2001, the Commission's Division of Information Resources shall make a downloadable version of the Proposed Rules available for access by the public at the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>. The Clerk of the Commission shall make a copy of the Proposed Rules available for public inspection in his office and provide a copy of the proposed rules, free of charge, in response to any written request for one.

(4) Interested persons wishing to comment, propose modifications or supplements to, or request a hearing on the Proposed Rules shall file an original and fifteen (15) copies of such comments, proposals, or request with the Clerk of the Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218, on or before June 13, 2001, making reference to Case No. PUC010100.

(5) On or before May 25, 2001, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A PROCEEDING  
TO ADOPT RULES GOVERNING AN ALTERNATIVE  
DISPUTE RESOLUTION PROCESS FOR  
TELECOMMUNICATIONS CARRIERS  
CASE NO. PUC010100

Recognizing that there is a need for an additional procedure to accommodate the need for expeditious resolution of disputes between competing telecommunications carriers, competitive, incumbent, or otherwise, the State Corporation Commission ("Commission") believes the implementation of an Alternative Dispute Resolution Process ("ADRP") is essential to help support effective competition in Virginia. The ADRP may be beneficial to both carriers and the public in that it will address the need for telecommunications carriers to be heard promptly with regard to certain issues that may affect the development of telephone competition.

Accordingly, as part of our collaborative effort in Case No. PUC000026, proposed rules for an ADRP ("Proposed Rules") were developed with input from the Dispute Resolution Subcommittee established as part of that case.

Interested parties may obtain a copy of the Proposed Rules by visiting the Commission's website,  
<http://www.state.va.us/scc/caseinfo/orders.htm>, or obtaining a copy from the Clerk's office. The Clerk's office will provide a copy of the Proposed Rules to any interested party, free of charge, in response to any written request for one. The Proposed Rules will also be forwarded to the Office of the Registrar of Regulations for publication in the Virginia Register of Regulations.

Any person desiring to comment in writing or request a hearing on the Proposed Rules may do so by directing such comments or requests for hearing on or before June 13, 2001, to the

Clerk of the Commission, c/o Document Control  
Center, P.O. Box 2118, Richmond, Virginia  
23218. Comments and requests for hearing must  
refer to Case No. PUC010100. Requests for  
hearing shall state with specificity why such  
concerns cannot be adequately addressed in  
written comments.

If no requests for hearing are received, a  
formal hearing with oral testimony may not be  
held and the Commission may make its decisions  
administratively, based upon papers filed in  
this proceeding.

VIRGINIA STATE CORPORATION COMMISSION

(6) This matter is continued for further orders of the  
Commission.

**CHAPTER 405**

**RULES FOR ALTERNATIVE DISPUTE RESOLUTION PROCESS.**

**20 VAC 5-405-10. Scope of Alternative Dispute Resolution Process.**

A. The Alternative Dispute Resolution Process ("ADRP") is limited to disputes between telecommunications carriers that arise from action or inaction by a telecommunications carrier that allegedly: (i) compromises the ability of a carrier to provide uninterrupted service, (ii) unreasonably delays the provisioning of scheduled service, (iii) violates a provision of an enforceable interconnection agreement, including non-exemption specific collocation disputes, or (iv) constitutes unfair competition.

B. For purposes of the ADRP, the term "scheduled service" includes scheduled installation, connection, provisioning, maintenance and repair, and disconnection, intervals for telecommunications services, unbundled network elements and other services, facilities and arrangements, provided by one carrier to another carrier that are necessary for the provision of telecommunications service to an end user. Such services, facilities, and arrangements include, but are not limited to, local number portability with and without loops, coordinated loop cut-overs, updates to databases, such as 911 databases and Line Information Data Bases, and lines that one carrier provides to another carrier.

C. A carrier unreasonably delays the provisioning of a scheduled service when the carrier misses the commitment time (if any) and date for the provisioning of the scheduled service, without good cause, as determined by the Hearing Examiner.

D. ADRP is not designed to be a substitute for any dispute resolution procedures that may be specified in the carriers' interconnection agreements; nor is the process designed to

handle disputes that involve generic policy issues, consumer complaints against carriers, requests for damages such as under any performance assurance plan, or any issues that the Hearing Examiner finds cannot be reasonably tried or the record developed on an expedited basis.

**20 VAC 5-405-20. Notice and good faith negotiations.**

The petitioning carrier ("Petitioner") shall give the answering carrier ("Respondent") and the Office of Hearing Examiners at least 30 days' written notice of its intent to file an ADRP Petition. Each ADRP notice shall be so identified in bold typeface at the top of the first page, as follows: "Notice of Intention to File an Alternative Dispute Resolution Petition with the Virginia State Corporation Commission." In addition to the written notice, and before a petition is filed under the ADRP, the Petitioner shall engage in good faith negotiations with the Respondent with respect to the dispute in question for the longer of either: (i) 30 calendar days; or (ii) the period agreed to in their interconnection agreement.

**20 VAC 5-405-30. Collocation disputes not involving a request for exemption from physical collocation**

Collocation disputes are within the scope of the ADRP, provided that disputes concerning exemption from a requirement to provide physical collocation shall not be handled in the ADRP but shall be handled in accordance with 20 VAC 5-400-220 and other commission rules specifically intended to apply to such disputes.

**20 VAC 5-405-40. Petition for resolution of disputed issues.**

A. A carrier directly involved in a dispute subject to ADRP that cannot be resolved through good faith negotiations may file an Alternative Dispute Resolution Petition with the commission.

B. Each petition shall include specifics of the action or inaction alleged to have violated one or more of the four standards identified in 20 VAC 5-405-10. The petition shall also include copies of all documents within the Petitioner's possession that are likely to bear significantly on the issues raised in the petition. As part of the Alternative Dispute Resolution Petition, the Petitioner shall state that it has complied with the negotiation requirement of 20 VAC 5-405-20.

C. Finally, in order to ensure proper handling by commission staff and to provide notice to the Respondent of the expedited schedule for processing these disputes, each ADRP petition should be clearly so identified by bold typeface above the identifying caption on the first page as follows:

**“Alternative Dispute Resolution Petition: Answer Due Within 10 Calendar Days.”**

**20 VAC 5-405-50. Serving copies and docketing.**

An original and four copies of the Alternative Dispute Resolution Petition shall be filed with the Clerk of the commission. Each Alternative Dispute Resolution Petition will be assigned a separate docket number. Copies shall also be served on the Respondent, the Office of General Counsel, the Office of Hearing Examiners, the Division of Communications, and the Office of the Attorney General on the same date. A pleading will be considered filed on the day the pleading is received by the Clerk of the commission. A pleading will be considered served on the Respondent on the day the pleading is received by the Respondent.

**20 VAC 5-405-60. Assignment of a Hearing Examiner; prehearing conference.**

Within four calendar days of the filing and service of an Alternative Dispute Resolution Petition, a Hearing Examiner shall be assigned to the matter by the Chief Hearing Examiner.



The Hearing Examiner shall schedule a prehearing conference at the earliest possible date to determine whether the petition qualifies for ADRP and, if so, to determine the schedule for the proceeding and other matters relevant to management and resolution of the dispute. At any time prior to the conclusion of the prehearing conference, the presiding Hearing Examiner may reject any petition for alternative dispute resolution that does not fall within the scope of this chapter or contains issues that cannot be reasonably tried or developed on an expedited basis. After the prehearing conference, the matter shall remain within the ADRP unless, upon motion by either the Petitioner or Respondent, the Hearing Examiner decides otherwise.

**20 VAC 5-405-70. Answer.**

Within 10 calendar days of service of the Alternative Dispute Resolution Petition and supporting documentation on the Respondent, the Respondent shall file an answer with the Clerk. The answer shall include copies of all documents in the Respondent's possession that are likely to bear significantly on the issues raised in the petition. Copies shall also be served on the Petitioner, the Office of Hearing Examiners, the Office of General Counsel, the Division of Communications, and the Office of the Attorney General on the same date.

**20 VAC 5-405-80. Office of General Counsel.**

The carriers will be the primary participating parties in the Alternative Dispute Resolution Process. The Office of General Counsel may participate in the proceeding but may not conduct formal discovery and is precluded from opposing the voluntary withdrawal of an Alternative Dispute Resolution Petition due to consummation of a settlement between the carriers.

**20 VAC 5-405-90. Evidentiary hearing.**

The presiding Hearing Examiner will conduct an evidentiary hearing including sworn witnesses, reasonable cross-examination, and a transcription of the record. The carriers will also have the opportunity to file briefs prior to the Hearing Examiner's adjudication. The Hearing Examiner shall issue an Initial Decision resolving the dispute within 35 calendar days of the filing of the Alternative Dispute Resolution Petition, unless the Hearing Examiner extends the time frame for good cause shown, recognizing that an expeditious result is in the public interest.

**20 VAC 5-405-100. Discovery.**

The carriers are encouraged to exchange information informally. The carriers will also be permitted to seek leave to conduct such limited formal discovery as deemed reasonable and necessary by the presiding Hearing Examiner to resolve the contested issues. Whether and the extent to which leave to conduct limited formal discovery should be granted is a matter within the discretion of the presiding Hearing Examiner.

**20 VAC 5-405-110. Exceptions.**

Participating carriers may file exceptions to the Initial Decision of the Hearing Examiner within seven calendar days of issuance. Reply exceptions shall be filed within five calendar days after exceptions are served. If no exceptions are filed and if the Commissioners do not elect to review the Initial Decision within 15 calendar days of issuance, the commission will issue an order adopting the Hearing Examiner's Initial Decision. If exceptions are filed or if commission review is elected, the matter will be addressed by commission final order.

**20 VAC 5-405-120. Mediation.**

A. Either party may, at any time prior to five calendar days before the hearing, request that the Division of Communications conduct supervised settlement discussions. The request shall act as a stay of the proceedings of up to five business days pending mediation. However, the carriers may, by mutual agreement, further extend this period for an additional 30 days. No further extensions shall be permitted. The mediator shall have discretion to shorten the time period for mediation if it appears that settlement is unlikely. If no settlement is reached, the stay will be terminated and the case referred back to the assigned Hearing Examiner. The stay shall not count against the Hearing Examiner's time to issue an Initial Decision. If a settlement is reached, the assigned mediator will immediately issue a mediation report with the attached proposed settlement agreement to the assigned Hearing Examiner for review and disposition by Initial Decision.

B. Staff assigned as mediators shall be bound by the commission's Rules of Practice and Procedure (5 VAC 5-10-10 et seq.) regarding their participation in a subsequently docketed case involving the same dispute.

**20 VAC 5-405-130. Other remedies.**

The ADRP is not intended to replace or preclude any other procedures or remedies otherwise available to any of the carriers under law, and a carrier's participation in this alternative dispute resolution process shall not be considered a waiver of any available substantive or procedural rights.